

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Olas Carayannis	Team: Squad #12	CCRB Case #: 201505478	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 07/01/2015 1:21 PM	Location of Incident: Frederick Douglass Boulevard and West 129th Street, inside an ambulance	Precinct: 32	18 Mo. SOL 1/1/2017	EO SOL 1/1/2017	
Date/Time CV Reported Thu, 07/02/2015 10:32 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 07/02/2015 10:32 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Melissa Veliz	12807	948713	PSA 6
2. POM Jean Francisco	12654	950438	PSA 6
3. SGT Raymond Sette	5269	947484	PSA 6
4. POF Tamara Williams	07912	939697	032 PCT
5. Officers			
6. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Christian Balbi	05762	951520	032 PCT
2. POF Shalonda Ingram	28742	935564	032 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Melissa Veliz	Abuse: At Frederick Douglass Boulevard and West 129th Street in Manhattan, PO Melissa Veliz stopped § 87(2)(b)	
B.POM Jean Francisco	Abuse: At Frederick Douglass Boulevard and West 129th Street in Manhattan, PO Jean Francisco stopped § 87(2)(b)	
C.POM Jean Francisco	Abuse: At Frederick Douglass Boulevard and West 129th Street in Manhattan, PO Jean Francisco frisked § 87(2)(b)	
D.POF Melissa Veliz	Abuse: At Frederick Douglass Boulevard and West 129th Street in Manhattan, PO Melissa Veliz searched § 87(2)(b)	
E.POM Jean Francisco	Force: At Frederick Douglass Boulevard and West 129th Street in Manhattan, PO Jean Francisco used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
F.POM Jean Francisco	Force: At Frederick Douglass Boulevard and West 129th Street in Manhattan, PO Jean Francisco used physical force against § 87(2)(b)	
G.POF Tamara Williams	Force: At Frederick Douglass Boulevard and West 129th Street in Manhattan, PO Tamara Williams used pepper spray against § 87(2)(b)	
H. Officers	Force: At Frederick Douglass Boulevard and West 129th Street in Manhattan, officers used physical force against § 87(2)(b)	
I. An officer	Force: At Frederick Douglass Boulevard and West 129th Street in Manhattan, an officer used physical force against § 87(2)(b)	
J.POM Jean Francisco	Force: Inside an ambulance, PO Jean Francisco used physical force against § 87(2)(b)	
K.SGT Raymond Sette	Force: At Frederick Douglass Boulevard and West 129th Street in Manhattan, Sgt. Raymond Sette used physical force against § 87(2)(b)	
L.SGT Raymond Sette	Discourtesy: At Frederick Douglass Boulevard and West 129th Street in Manhattan, Sgt. Raymond Sette spoke discourteously to § 87(2)(b)	

Case Summary

On July 2, 2015, an § 87(2)(b) complainant filed the following complaint via the CCRB website on § 87(2)(b)'s behalf. On July 14, 2015, § 87(2)(b)'s mother, filed a duplicate complaint with the Internal Affairs Bureau on her own behalf and on behalf of § 87(2)(b).

On July 1, 2015, at approximately 1:21 p.m., § 87(2)(b) was standing near the intersection of West 129th Street and Fredrick Douglass Boulevard in Manhattan with § 87(2)(b) when he was approached by PO Melissa Veliz and PO Jean Francisco, both from PSA6. PO Francisco placed his forearm on § 87(2)(b)'s chest (**Allegation A and B**) and frisked his chest and pockets (**Allegation C**). § 87(2)(b) did not notice at the time, but PO Veliz removed a 3-inch pocket knife from § 87(2)(b)'s pocket (**Allegation D**). PO Francisco asked for § 87(2)(b)'s identification and upon receiving it he immediately placed it in his pocket and took his handcuffs off his belt. PO Francisco asked § 87(2)(b) to come with him. § 87(2)(b) said that he would not and that he was going home. § 87(2)(b) attempted to walk away. PO Francisco pushed § 87(2)(b) and § 87(2)(b) pushed PO Francisco's hands away (**Allegation E**). PO Francisco swung his fist at § 87(2)(b) and brushed his chin (**Allegation F**). PO Francisco punched the left side of § 87(2)(b)'s face twice. § 87(2)(b) raised his fists in front of his face and PO Francisco punched § 87(2)(b) a total of seven times with five or six of the punches connecting with his face (**Allegation F continued**). Additional officers arrived to the location and grabbed § 87(2)(b) twisting him to the ground. PO Tamara Miller, from the 32nd Precinct and whose name has subsequently changed to PO Tamara Williams, pepper sprayed § 87(2)(b) (**Allegation G**). An officer placed a knee on § 87(2)(b)'s back (**Allegation H**) and another officer placed a knee on § 87(2)(b)'s face (**Allegation I**). § 87(2)(b) was handcuffed and taken to an ambulance. Inside the ambulance, § 87(2)(b) was spitting blood. PO Francisco said to § 87(2)(b) that he was spitting too much and he punched § 87(2)(b) on the right and left side of the face (**Allegation J**). § 87(2)(b) arrived at this time. She asked, "Why are you hitting my son?" and she attempted to enter the ambulance. Sgt. Raymond Sette, from PSA 6, pushed § 87(2)(b) backward (**Allegation K**) and said, "Get the fuck away from the door" (**Allegation L**). Sgt. Sette closed the door of the ambulance. PO Francisco lifted § 87(2)(b)'s shirt over his face and pulled it backward (**Allegation J continued**).

§ 87(2)(b) was treated at § 87(2)(b) Hospital where he received stitches to his lip and he was told he had a fractured nose. § 87(2)(b)

§ 87(2)(b)

(Board Review 02).

This case was reassigned from Investigator Christina Vuong to Investigator Nicholas Carayannis on September 28, 2015.

This case has passed the 90 day mark due to personnel changes and the number of civilian and officer interviews involved.

IAB conducted a concurrent investigation, which, according to Sgt. David Depalma (the investigating officer on the case), had one unfounded allegation of force against PO Veliz and one exonerated allegation of force against PO Francisco. As of December 15, 2015, the IAB case file is still pending receipt.

Attached below is video footage taken by § 87(2)(b) on a mobile device (see 201505478_20151215_1312A.mp4, hereafter referred to as “1312A” and 201505478_20151215_1313_DM.mp4, hereafter referred to as 1313) and from a surveillance camera from an adjoining building (see 201505478_20151215_1312_DM.mp4 hereafter referred to as “1312”). The cell phone video was adversely affected by its compression into “SnagIt.” The original video can be found under Board Review 28.



201505478_20151215_1312_DM.mp4



201505478_20151215_1312A_DM.mp4



201505478_20151215_1313_DM.mp4

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- On November 17, 2015, no Notice of Claim was filed with New York City Office of the Comptroller (Board Review 24).
- § 87(2)(c) [REDACTED]

Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) has been a party (Board Review 01).
- § 87(2)(b) [REDACTED]
- PO Melissa Veliz has been a member of service for five years and has no substantiated CCRB allegations against her.
- PO Jean Francisco has been a member of service for four years and has no substantiated CCRB allegations against him.
- Sgt. Sette has been a member of service for seven years and this is the first CCRB complaint that has been filed with him as a subject.
- PO Tamara Williams (nee Miller) has been a member of service for 10 years and she has no substantiated CCRB allegations against her
- PO Christian Balbi has been a member of service for three years and he has no substantiated CCRB allegations against him.

Findings and Recommendations

Allegation A—Abuse of Authority: At Frederick Douglass Boulevard and West 129th Street in Manhattan, PO Melissa Veliz stopped § 87(2)(b)

Allegation B—Abuse of Authority: At Frederick Douglass Boulevard and West 129th Street in Manhattan, PO Jean Francisco stopped § 87(2)(b)

Allegation C—Abuse of Authority: At Frederick Douglass Boulevard and West 129th Street in Manhattan, PO Jean Francisco frisked § 87(2)(b)

Allegation D—Abuse of Authority: At Frederick Douglass Boulevard and West 129th Street in Manhattan, PO Melissa Veliz searched § 87(2)(b)

It is undisputed that PO Francisco and PO Veliz stopped § 87(2)(b) that PO Francisco frisked § 87(2)(b) and that PO Veliz searched § 87(2)(b). It is undisputed that § 87(2)(b) had a pocket knife which was less than three inches and was not a gravity knife.

The video does not show this part of the encounter.

PO Francisco (Board Review 11) stated that he observed the clip of the knife and the top of it inside of § 87(2)(b)'s pocket. He stated that other than knowing that it was a knife, he could not tell whether it was a legal or illegal knife. There was nothing else about § 87(2)(b)'s person or behavior that contributed to PO Francisco's suspicion of criminality. PO Francisco stated that he blocked § 87(2)(b)'s path and PO Veliz removed the knife from § 87(2)(b)'s pocket. § 87(2)(b) was angry and he cursed at the officers, stating that he had a pocket knife and questioning what was wrong with that. PO Francisco observed the knife and realized that it was less than three inches. He did not know if it was a gravity knife. PO Francisco intended to summons § 87(2)(b) for possession of the knife. PO Francisco frisked § 87(2)(b)'s waistband to ensure that he did not have additional weapons.

PO Veliz (Board Review 12) stated that she observed the clip of the knife in § 87(2)(b)'s pocket, but she could not determine its legality at this point. § 87(2)(b) did not reach toward the knife nor was there anything else about his person or behavior that made her suspect him of engaging in criminality. However, she believed that § 87(2)(b) acted evasively by asking what the reason for the stop was. PO Francisco removed the knife from § 87(2)(b)'s pocket immediately upon approaching him.

People v DeBour 40 N.Y.2d 210, 215 (1976) (Board Review 09) an officer must have reasonable suspicion of criminality to stop an individual. An officer must have reasonable suspicion of the possession of a weapon in order to frisk an individual.

People v Brannon 16 N.Y.3d 596 (2011) (Board Review 06) an individual cannot be detained merely because of the presence of a knife-like object, which could otherwise be a legal object such as a pocket knife. The officer "must have reason to believe that the object observed is indeed a gravity knife, based on his or her experience and training and/or observable, identifiable characteristics of the knife. An individual may not be detained merely because he or she is seen in possession of an object that appears to be a similar, but legal object, such as a pocket knife."

§ 87(2)(g)

Allegation E—Force: At Frederick Douglass Boulevard and West 129th Street in Manhattan, PO Jean Francisco used physical force against § 87(2)(b)

It is not disputed that § 87(2)(b) attempted to walk away from PO Veliz and PO Francisco after they had recovered a knife from § 87(2)(b)'s pocket. It is not disputed that PO Francisco and § 87(2)(b) pushed each other back and forth as § 87(2)(b) attempted to walk away (the video evidence also depicts this). PO Francisco pushed § 87(2)(b) first. It is also not disputed that PO Francisco and PO Veliz intended to summons § 87(2)(b).

Patrol Guide Procedure 203-11 (Board Review 07) states that officers should use the minimal amount of force necessary to apprehend an individual.

§ 87(2)(g)

Allegation F—Force: At Frederick Douglass Boulevard and West 129th Street in Manhattan, PO Jean Francisco used physical force against § 87(2)(b)

It is undisputed that PO Francisco punched § 87(2)(b) multiple times in the head. It is undisputed that § 87(2)(b) put his fists up in front of his face.

Two cameras captured this incident: a surveillance camera of an adjoining building and cell phone footage taken by § 87(2)(b) (see the video links above).

After § 87(2)(b) and PO Francisco pushed each other multiple times, § 87(2)(b) places his hand near PO Francisco in the upper chest/throat/face region. Both the surveillance footage (see above “1312” at the 2:18 mark) and the cell phone footage (see above “1312A” at the 1:32 mark) do not clearly capture whether this movement is with an open palm or a closed fist and it is unclear whether this movement is a punch or a push. PO Francisco punches § 87(2)(b) in the left area of his face with his right hand. § 87(2)(b) rapidly walks backward and PO Francisco walks forward with his right fist clenched. § 87(2)(b) continues to walk backward with his hands on his back/waist area pulling up his pants. PO Veliz says over the radio, “We have a police officer fighting a civilian on the street.” PO Veliz grabs § 87(2)(b)’s right arm and § 87(2)(b) throws his hand so that she loses her grip. PO Francisco punches § 87(2)(b) in the face again. § 87(2)(b) leans against a parked car. The cell phone camera pans down so that § 87(2)(b)’s face is not in view. The surveillance camera shows that PO Francisco punches § 87(2)(b) in the face again at this time. When the cell phone camera pans back up, PO Francisco punches § 87(2)(b) again in what looks like his face. § 87(2)(b) swings his arms, PO Francisco back up, and § 87(2)(b) walks to the side with his fists clenched. § 87(2)(b) throws a punch at PO Francisco. The cell phone camera pans away and does not catch whether or not the punch connected. The surveillance footage is too far away to determine whether the punch connected with PO Francisco. When the cell phone camera pans up, § 87(2)(b) throws another punch at PO Francisco, who has his fists up in a boxing stance. PO Francisco leans back and throws a punch at § 87(2)(b)’s head. § 87(2)(b) is in a fighting stance and he begins to move around PO Francisco. PO Francisco throws another punch at § 87(2)(b)’s face. § 87(2)(b) moves backward. § 87(2)(b) moves away from both officers toward the parked vehicle. PO Veliz attempts to grab his arm and § 87(2)(b) throws up his hands so that she cannot grip him. He walks around her. He has his arms at his side and appears to be walking away from the camera and the officers. PO Veliz and PO Francisco step in front of him and § 87(2)(b) begins walking backward. PO Veliz attempts to grab his arms again and § 87(2)(b) pushes her arms away. PO Francisco punches § 87(2)(b) in the face and § 87(2)(b) leans to the side. PO Francisco punches at § 87(2)(b) again, but the camera does not catch where, or if, it lands. Multiple officers arrive.

§ 87(2)(b) (Board Review 13) denied taking a swing at PO Francisco prior to PO Francisco punching him in the face. § 87(2)(b) stated that he pushed PO Francisco’s hands away but did not otherwise make physical contact with PO Francisco.

PO Francisco (Board Review 11) stated that § 87(2)(b) punched him in the face prior to PO Francisco punching § 87(2)(b). PO Francisco then punched § 87(2)(b) in the upper chest or chin. § 87(2)(b) adopted a fighting stance at that point. PO Francisco acknowledged that he

apprehending him and to gain compliance. She was unaware of what preceded her arrival, but when she arrived, she observed § 87(2)(b) pulling his arms away from officers.

PO Balbi (Board Review 15) stated that § 87(2)(b) pulled his hands out of PO Balbi's grasp and that the officers all fell to the ground with § 87(2)(b) when PO Williams pepper sprayed him. PO Balbi was hit with the pepper spray as well.

Patrol Guide Procedure 212-95 (Board Review 08) states that an officer is permitted to use pepper spray during an arrest when verbal commands are not, or would not be, sufficient to overcome physical resistance.

§ 87(2)(g)

Allegation H—Force: At Frederick Douglass Boulevard and West 129th Street in Manhattan, officers used physical force against § 87(2)(b)

It is undisputed that multiple officers arrived to the location, took § 87(2)(b) to the ground, placed a knee on his back, and handcuffed him.

Patrol Guide Procedure 203-11 (Board Review 07) states that officers are to use the minimal amount of force necessary to apprehend an individual.

§ 87(2)(g)

Allegation I—Force: At Frederick Douglass Boulevard and West 129th Street in Manhattan, an officer used physical force against § 87(2)(b)

§ 87(2)(b) stated that an officer placed his knee on § 87(2)(b)'s face while he was on the ground.

§ 87(2)(b) (Board Review 16) stated that he could not remember if an officer placed a knee on § 87(2)(b)'s face.

The video evidence shows an officer with his knee on § 87(2)(b)'s back, but no officer is captured with their knee on his face.

All of the officers interviewed did not see any officer place their knee on § 87(2)(b)'s face.

§ 87(2)(g)

Allegation J—Force: Inside an ambulance, PO Jean Francisco used physical force against § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) both state that PO Francisco continued to punch § 87(2)(b) in the face when he was in the ambulance. § 87(2)(b) alleged that PO Francisco pulled his shirt over his face and pulled backward on it. § 87(2)(b) did not allege this.

§ 87(2)(b) did not see PO Francisco punch § 87(2)(b) while he was in the ambulance. There is no video footage of this interaction. § 87(2)(b) did not see PO Francisco pull § 87(2)(b)'s shirt over his face or pull it backward.

EMT § 87(2)(b) and EMT § 87(2)(b) did not see PO Francisco punch § 87(2)(b) nor did they see PO Francisco pull § 87(2)(b)'s shirt over his face and pull backward. EMT § 87(2)(b) confirmed that an officer told him that § 87(2)(b) was spitting and that he placed a surgical mask on § 87(2)(b).

PO Francisco denied punching § 87(2)(b) in the ambulance. PO Francisco stated that § 87(2)(b) was spitting blood and hitting his head against PO Francisco's stomach. For a few seconds, PO Francisco lifted § 87(2)(b)'s shirt up to keep him from spitting. He did this until an EMT placed a mask on § 87(2)(b).

None of the other officers interviewed were present for this event and none of the other officers interviewed observed these actions.

§ 87(2)(g)

Allegation K—Force: At Frederick Douglass Boulevard and West 129th Street in Manhattan, Sgt. Raymond Sette used physical force against § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) (Board Review 17) all stated that Sgt. Sette pushed § 87(2)(b) away from the ambulance. § 87(2)(b) and § 87(2)(b) both stated that she was only pushed once, and § 87(2)(b) stated that Sgt. Sette pushed her multiple times. § 87(2)(b) stated that the push caused her to stumble backward, but not to fall. § 87(2)(b) did not claim any injury.

EMT § 87(2)(b) (Board Review 18), who was in the ambulance that was transporting § 87(2)(b), saw § 87(2)(b) at the ambulance. He did not see Sgt. Sette push her. He did not hear an officer tell her that she was impeding the movement of the ambulance and she needed to leave.

EMT § 87(2)(b) § 87(2)(b) (Board Review 19), who was also in the ambulance that § 87(2)(b) was in, saw § 87(2)(b) at the door of the ambulance. EMT § 87(2)(b) Hutchinson asked § 87(2)(b) to move from the door so that the ambulance could leave. § 87(2)(b) said that she was “just talking to her fucking son.” Sgt. Sette either pushed or pulled § 87(2)(b) away from the ambulance.

Sgt. Sette (Board Review 20) stated that § 87(2)(b) was attempting to get into the ambulance and ride with her son. Sgt. Sette told her that she could not accompany him to the hospital. Sgt. Sette shut the ambulance door without making physical contact with § 87(2)(b).

None of the other officers observed Sgt. Sette shut the door on § 87(2)(b) or have physical contact with § 87(2)(b).

§ 87(2)(g)

Patrol Guide Procedure 203-11 (Board Review 07) states that officers should use minimal necessary force when interacting with civilians.

§ 87(2)(g)

Allegation L—Discourtesy: At Frederick Douglass Boulevard and West 129th Street in Manhattan, Sgt. Raymond Sette spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged that Sgt. Sette told her to “get the fuck away from the door.”

§ 87(2)(b) did not allege this.

§ 87(2)(b) when asked, stated that Sgt. Sette spoke discourteously, but he could not recall what words or phrases he used.

EMT § 87(2)(b) and EMT § 87(2)(b) heard a conversation regarding § 87(2)(b) moving away from the ambulance, but they did not hear any profanity used.

Sgt. Sette denied using any profanity when speaking with § 87(2)(b). All of the other officers interviewed denied hearing Sgt. Sette using any profanity when speaking with § 87(2)(b).

§ 87(2)(g)

Squad: 16

Investigator:	_____	<u>Nicholas Carayannis</u>	<u>December 17, 2015</u>
	Signature	Print	Date

Pod Leader:	_____	_____	_____
	Title/Signature	Print	Date

Attorney:	_____	_____	_____
	Title/Signature	Print	Date